

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1103 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KULSUM JUSAB W/O JUSAB KHAMISHA

Versus

STATE OF GUJARAT

Appearance:

Mr.H.K.Rathod for the petitioner

Mr.U.F.Mehta, PP, for respondent no.1

Coram: S.M.Soni & R.R.Jain JJ.

(20.8.96)

Oral Judgment: (per Soni J.)

Petitioner has filed this petition for issuance of a writ of Habeas Corpus against respondents nos.6 and 7 to direct to produce the husband of the petitioner Jusab Khamisha.

The facts, which reveal from the petition, are to the following effect:-

Said Jusab Khamisha was employed as

labourer with respondent no.5 -company, who is a Labour Contractor, working with the respondent no.4 - company. On the fateful day of 25.4.96, said Jusab had gone on duty. However, he did not return till the next day and one of the employees of the contractor enquired as to why Jusab is not reporting on duty and the search was made. Thereafter it appears that one H.M.Balim, President of Samasth Okhamandal Muslim Jyat has complained to one Minister Raghavjibhai Patel to the effect that on 25.4.96, workman Jusab has met with accidental death and he requested for necessary help to the heirs. Thereafter, one Reporter Anil Joshi has written a letter to the Chairman of Tata Chemicals Ltd., wherein also it is stated by him that while in employment, said Jusab was trapped in conveyer and has died accidentally. Thereafter the Minister to whom the letter was written had directed the DSP Jamnagar to enquire into the matter and to prosecute the complaint already registered with him. Thereafter, Jamnagar Jilla Panchayat Member Punabhai had also written to the Chairman of Tata Chemicals to the said effect.

From these correspondence, it is clear that said Jusab has not been detained by anyone. It is true that he is missing since 25.4.96 and a complaint has been lodged before the concerned Police Station and the same is pending investigation.

Unlawful detention is a sine qua non for issuance of a writ of Habeas corpus. In the instant case, there is no averment in the petition to the effect that said Jusab has been detained by any of the respondents and that too unlawfully. When the petition lacks basic requirement to assume jurisdiction to issue writ of Habeas corpus, the petition is liable to be dismissed. Hence, the petition is dismissed.

However, any of the observations made in this order is without prejudice to the right of the petitioner to ventilate her grievances before the appropriate forum.
